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Active Fire Sprinkler Corp. and Sprinkler Fitters and Apprentices Local 550, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Cases 1-CA-29751 and 1-CA-29796

May 17, 2000

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On February 16, 1995, the National Labor Relations Board issued an unpublished Order, ordering the Respondent, inter alia, to make whole its employees for any loss of wages or other benefits they may have suffered as a result of its unilateral refusal to apply the terms of its collective-bargaining agreement with the Charging Party Union, including, but not limited to, contributions to the welfare, pension, and education plans, with interest.

On December 28, 1999, the Acting Regional Director for Region 1 issued and served on the Respondent, by certified mail, a compliance specification and notice of hearing and a copy of the Board's Rules and Regulations, Section 102.56, answer to compliance specification. The compliance specification alleges, inter alia, that a total of \$1996.96 in wages and benefits is owed to Respondent's employees, Hazen Mudgett and Stephen John Kelley, and to the contractual benefit funds, specifically, the Welfare, Pension, and Apprentice Funds, plus interest, as a result of Respondent's violation of the terms of its agreement with the Union.

Although properly served with a copy of the compliance specification, the Respondent failed to file an answer. By letter dated February 1, 2000, and sent by certified mail, the Region's compliance officer advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by February 15, 2000, summary judgment would be sought.

On February 14, 2000, Morti Hirsch, the president of the Respondent, sent a letter to the compliance officer, in response to the compliance specification and notice of hearing. The letter, entitled "Answer denying allegations on the specification," stated that (a) both Kelley and Mudgett owe the Respondent moneys; (b) the Respondent has mistakenly overpaid Kelley and Mudgett; and (c) Kelley and Mudgett have admitted they did not work during the relevant period. The Respondent further stated that the Region had incorrectly read the pay periods of when Kelley and Mudgett were working and requested that the Board review, reevaluate, and recalculate the pay periods, number of hours worked, and moneys due, if

any, to Kelley and Mudgett. The Respondent submitted no alternate backpay formula or appropriate supporting figures.

On March 13, 2000, the General Counsel filed with the Board a Motion to Strike Respondent's Answer to the Compliance Specification and Motion for Summary Judgment, with exhibits attached. The General Counsel argues that the Respondent failed to follow the requirements set forth in Section 102.56 of the Board's Rules and Regulations, because the Respondent (a) failed to serve the other parties with a copy of the answer; (b) failed to swear to its answer; (c) failed to specifically admit, deny, or explain each and every allegation of the compliance specification; and (d) failed to meet the specificity requirements of the Board's Rules and Regulations, in that the answer consists merely of a series of general assertions that do not respond to any particular allegation in the compliance specification.

On March 15, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motions should not be granted. The Respondent did not file a response. The allegations in the motions are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Rulings on the Motions

Section 102.56(a), (b), and (c) of the Board's Rules and Regulations states:

- (a) Filing and service of answer; form.—Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.
- (b) Contents of answer to specification.—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures

in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

In his motions to strike the Respondent's answer and for summary judgment the General Counsel contends that the Respondent has failed to comply with the specificity requirements of Section 102.56(a), (b), and (c), of the Board's Rules. We agree. See Rocform Corp., 327 NLRB No. 42 (1998). The Respondent has not sworn to its answer or served a copy of its answer on the other parties as required under Section 102.56(a). The Respondent's answer contains only general denials claiming that (a) it was proven that Kelley and Mudgett owed money to the Respondent because they were paid during no work periods; (b) the Respondent mistakenly made payments to Kelley and Mudgett, which exceeded the Region's analysis; (c) Kelley and Mudgett admitted they did not work during the relevant periods; (d) the Region incorrectly read the pay periods of when Kelley and Mudgett were working; and (e) because the Respondent overpaid Kelley and Mudgett, no moneys are due either one. The Respondent has not furnished any alternative backpay formula or calculations in support of its claims, but requests that the Board review, reevaluate, and recalculate the backpay periods and computation of moneys due Kelley and Mudgett. At best, these claims appear to be an attempt to relitigate issues decided in the unfair labor practice proceeding. It is well settled that "[i]ssues litigated and decided in an unfair labor practice proceeding may not be relitigated in the ensuing backpay proceeding." Transport Service Co., 314 NLRB 458, 459 (1994). Therefore, we shall grant the motions.

Thus, pursuant to Section 102.56(c) the following allegations of the compliance specification stand uncontroverted:

- (1) The gross backpay due discriminatees Stephen John Kelley and Hazen Mudgett is the amount of earnings and benefits each would have received but for Respondent's violation of the terms of its agreement with the Union.
- (2) An appropriate measure of the gross earnings due each discriminate during the backpay periods is their gross wages and benefits to which they are entitled under the collective-bargaining agreement in effect in 1992 at the time of the violations.
- (3) The contractual benefit fund contribution rates provided in the Agreement for 1992 are as follows: Welfare Fund (\$3.15/hour); Pension Fund (\$2.00/hour); Apprentice Fund (\$0.16/hour).
- (4) An appropriate measure of the fringe benefit contribution payments due on behalf of each respective discriminatee consists of the total number of hours owed during the backpay period quarter multiplied by the appropriate benefit fund rates referred to above.
- (5) The total gross backpay due each discriminatee is the sum of the calendar quarter amounts of gross backpay and benefits due him.
- (6) The backpay period for both discriminatees is the same: 12 hours of work in the week of April 8-14, 1992, and 16 hours of work in the week of August 5–11, 1992, when the Respondent utilized non-unit personnel to perform unit work in violation of the agreement.
- (7) The hourly rates of pay for Kelley and Mudgett were \$31.35 and \$29.35, respectively, during the backpay period.
- (8) The Respondent's obligation to make whole Kelley and Mudgett pursuant to the Board Order will be discharged by payment to them and to the contractual benefit funds on their behalf of the amounts set forth opposite their respective names below, plus interest accrued to the date of payment pursuant to the Board's Order, minus the tax withholdings equired by Federal and state laws:

Amounts Owed	Hazen Mudgett	Stephen John Kelley
Wages	\$821.80	\$877.80
Welfare Fund	88.20	88.20
Pension Fund	56.00	56.00
Apprentice Fund	4.48	4.48

ORDER

The National Labor Relations Board orders that the Respondent, Active Fire Sprinkler Corp., Brooklyn, New York, its officers, agents, successors, and assigns, shall pay a total of \$1996.96, to Hazen Mudgett, Stephen John Kelley, and the Union funds, respectively, as reflected

above, with additional interest due on the entire amount, computed in accordance with the formula set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Dated, Washington, D.C. May 17, 2000

Sar	rah M. Fox,	Member
Wi	lma B. Liebman,	Member
J. F	Robert Brame III,	Member
(SEAL)	NATIONAL LABOR RELATIONS BOARD	